

January 31, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500983**

ARDYCE SLEMKO
Code Enforcement Appeal

Location: 23323 - 147th Avenue Southwest

Appellant: **Ardyce Slemko**
14415 – 12th Avenue Southwest
Seattle, Washington 98166
Telephone: (206) 243-4459

King County: Department of Development and Environmental Services (DDES)
represented by Sheryl Lux
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part and deny in part

EXAMINER PROCEEDINGS:

Hearing opened:	January 15, 2008
Hearing continued administratively:	January 15, 2008
Hearing closed:	January 25, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. Ardyce Slemko has appealed a Notice and Order issued to her by the King County Department of Development and Environmental Services Code Enforcement Section on October 31, 2007. Ms. Slemko owns a long, narrow property on the west side of Vashon Island that was originally constructed with a beach-front cabin in about 1947. The cabin was seriously damaged by a landslide that knocked it off its foundation in January 1990. The Notice and Order cites Ms. Slemko for construction or repair of a landslide-damaged residence without required permits, construction and repair of a retaining wall without required permits, and clearing and grading without permits. All of these activities are alleged to have occurred within environmentally critical areas including a conservancy shoreline; landslide, erosion hazard and steep slope areas; and aquatic and critical aquifer recharge areas. Ms. Slemko has not contested the existence of these environmentally critical areas. The shoreline and aquatic areas are obvious from the site's location, and the existence of steep slopes and landslide hazards established by the factual record. Ms. Slemko filed a timely appeal of the Notice and Order, primarily asserting that a building permit application filed in 2000 should not have been canceled by the county.
2. As with many other properties on Vashon Island, the relationship between the Appellant and DDES is a long and convoluted one featuring many twists and turns. It is not the purpose of this proceeding to sort out all of the details of this history, but rather simply to establish which elements of the current Notice and Order, if any, should be sustained. There is, for example, a timber bulkhead constructed at the water's edge along the 70 foot width of the property that was substantially repaired in the mid-1980s. Ms. Slemko has submitted documentation that shows that this 1987 bulkhead repair project was determined exempt from county shoreline permitting requirements and received a state hydraulic project approval. The existence and legality of the bulkhead is not an issue in this proceeding.
3. The property also has some retaining walls located upland from the bulkhead. At this time there appears to be a retaining wall south of the existing residential structure more or less in line with the house's western wall as well as an easterly retaining wall behind the house and a third retaining wall to the north of the structure. Code Enforcement Officer Bill Turner's 1993 photographs (exh. no. 15) demonstrate that the eastern retaining wall behind the house is very old and that the southern wall is approximately the same vintage as the bulkhead that was repaired in the 1980s. Only the section of northern retaining wall appears to be obviously of recent vintage. Although no doubt both the eastern and southern walls have undergone recent minor repairs, based on the photographic evidence we conclude that only the northern section of retaining wall was clearly constructed since 1990 without required permits.
4. Equally unclear are the facts surrounding the allegations within the Notice and Order regarding clearing and/or grading to alleviate the landslide damage that occurred in 1990 and 1996. While one can reasonably surmise that some shovel work was done immediately after the slide events to clear dirt away from the house, at this late date there is little evidence to conclusively support the Notice and Order. The larger 1990 slide occurred some nine months before the adoption of the county's original sensitive areas ordinance, so any immediate minor spade work done at that time was likely exempt from grading permit requirements. The photographs of the 1996 slide, when compared with contemporary pictures, mostly shows that the slide area has been overgrown with vegetation. There is no evidence in either instance that heavy machinery was brought on to the property to move the slide debris. If DDES intends to be seriously concerned about small scale hand excavation in critical areas without permits, it will need to take enforcement action earlier

within the process when the scope of the property owner's activity can be more accurately assessed. At this point ten years later, DDES' evidence of grading activity consists of little more than speculation based on the comparison of old photographs; it is insufficient to support the Notice and Order.

5. The most serious issue raised by the Notice and Order concerns the reconstruction of the residence damaged by the 1990 landslide. The Assessor's records establish clearly that the footprint of the original 1947 cabin was about 480 square feet and that its successor structure measures a little over 700 square feet. Also a comparison of the photographs of the old cabin with those of the new dwelling show a different roof line and a different array of windows and doors. Plainly, the new structure embodies major structural changes that require the issuance of a building permit.
6. Whether the expanded dwelling structure can be retroactively permitted at its current site is a question that is beyond the scope of this proceeding. Given its location within critical areas and the landslide history, its continued existence is problematic at best. In addition to geotechnical issues and questions surrounding the legality of a nonconforming expansion, the record suggests that the provision of adequate septic services to this structure would be difficult and perhaps very expensive. In any event, if the Appellant wishes to continue in her quest to maintain a residence in this beach front location, a valid building permit will be required. Any question of whether the Appellant should be entitled to some level of credit resulting from her prior canceled building permit application is a matter for discussion between the Appellant and DDES. It is not an issue for resolution within this appeal proceeding.

CONCLUSIONS:

1. The appeal is GRANTED with respect to the citation within the Notice and Order for obtaining a clearing and/or grading permit. The appeal is also GRANTED with respect to the requirement for obtaining a permit for any retaining wall other than that which lies to the north of the existing structure (e.g., the southern and eastern walls).
2. The appeal is DENIED with respect to the citations within the Notice and Order to obtain a building permit for the construction or repair of the landslide damaged residence within environmental critical areas and for the northern retaining wall. The Appellant will either need to make a timely submission of a complete building permit application to legalize the existing structures or else obtain a permit for their demolition. The evidence of record clearly demonstrates that the new dwelling unit constructed subsequent to the 1990 landslide event is nearly 50% larger than the older cabin and involves the creation of a new structural support system. Accordingly its construction required the issuance of a building permit.

DECISION:

The appeal is granted in part and denied in part.

ORDER:

- A. With respect to the current dwelling unit, on or before June 30, 2008 the Appellant shall do one of the following:
 1. Submit a complete building permit application, including any required conditional use, variance, exception and Health Department approvals as may be necessary to legally authorize the continued existence of said dwelling unit;

OR

2. Obtain a demolition permit for removal of the dwelling. Demolition and site cleanup shall be completed by September 30, 2008.
- B. The dwelling unit on the property shall not be occupied until DDES has reviewed and approved any geotechnical studies required to establish the safety of the dwelling and any mitigations determined necessary by DDES have been implemented.
- C. On or before June 30, 2008 the Appellant shall either submit a building permit application for the construction of the retaining wall lying north of the dwelling unit or shall have demolished and removed said structure pursuant to a demolition permit.
- D. No penalties shall be assessed against the Appellant or her property if the foregoing requirements and deadlines are met.

ORDERED January 31, 2008.

Stafford L. Smith
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JANUARY 15, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500983.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department and Ardyce Slemko, the Appellant.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for E0500983 |
| Exhibit No. 2 | Copy of the Notice & Order issued October 31, 2007 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received November 19, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Article in and photograph of home and surrounding area from Beachcomber newspaper dated January 18, 1990 describing/depicting damage to the subject property after landslide |
| Exhibit No. 6 | Property records from the King County Assessor's Office, dates ranging from 1941 through 1973 |

- Exhibit No. 7 Property records from the King County Assessor's Office, dates ranging from 1990 through 1997
- Exhibit No. 8 Property records from the King County Assessor's Office, dated March 2007
- Exhibit No. 9 DDES file E0500983 case log printout, dated 1993 through 2006
- Exhibit No. 10 Copy of the Notice and Order E9301331 issued November 22, 1993
- Exhibit No. 11 Copy of the Notice and Statement of Appeal for E9301331 received December 7, 1993
- Exhibit No. 12 Order of Dismissal for E9301331 dated September 7, 2000
- Exhibit No. 13 Permit Application Disapproval letter from Seattle and King County Public Health, dated September 25, 2000
- Exhibit No. 14a Aerial photograph of subject property taken 2002
- Exhibit No. 14b Map of Critical Aquifer Recharge Areas on subject property
- Exhibit No. 14c Map of Landslide hazard zones on subject property
- Exhibit No. 15 Photographs of subject property taken by Bill Turner on October 19, 1993
- Exhibit No. 16 Photographs of subject property depicting condition of property after a recent landslide, taken by Bill Turner on February, 23, 1996
- Exhibit No. 17 Photographs of subject property depicting "Do Not Enter" Notice posted on property and condition of structure after 1996 landslide cleanup, taken by Erroll Garnett on December 17, 1999
- Exhibit No. 18 Photographs of subject property depicting condition of soil after recent landslide, taken by Sheryl Lux on February 9, 2006
- Exhibit No. 19 Photographs of subject property depicting condition of property after 2006 landslide cleanup, taken by Sheryl Lux on November 7, 2007
- Exhibit No. 20 Response to DDES Report by Appellant Ardyce Slemko dated January 15, 2008

The following Exhibit was entered into the record on January 25, 2008:

- Exhibit No. 21 Letter from Ardyce Slemko with copies of permits and correspondence

SLS :gao

E0500983 RPT